country. Marshall, *Corporations,* sec. 318; *Bond v. Bean* (1904) 72 N. H. 444, 57 Atl. 340; *Smith v. Meeker* (1912) 153 Iowa, 655, 133 N. W. 1058. The majority rule fits with the general American rule that delivery of the evidence of a chose in action, though without consideration, and without a written assignment, will constitute a valid gift *inter vivos* of the chose in action, if the delivery is made with that intent. *Grover v. Grover* (1837, Mass.) 24 Pick. 261 (negotiable note); *Meriden Savings Bank v. McCormack* (1906) 79 Conn. 260, 64 Atl. 338 (bank book); *Hani v. Germania Ins. Co.* (1900) 197 Pa. 276, 47 Atl. 200 (insurance policy). It has been said that the rule arose because our courts did not recognize the distinction made by the English courts in regard to choses in action between gifts *causa mortis* and gifts *inter vivos.* Oliver S. Rundell, *Gifts of Choses in Action* (1918) 27 YALE LAW JOURNAL, 643, 654; and see George P. Costigan, *Gifts inter Vivos of Choses in Action* (1911) 27 L. QUART. REV. 326. But whatever the origin of the rule, it is now based on the doctrine that since a chose in action is alienable at law as well as in equity, its transfer should be assimilated to that of interests in tangible chattels; hence that delivery of evidence of a chose in action—evidence received everywhere in the business world as practically the chose in action itself in tangible form—that such delivery made with intent to effect a gift of that chose, does constitute a valid gift *inter vivos.* Walter W. Cook, *The Alienability of Choses in Action* (1916) 29 HARV. L. REV. 816; and see *Editorial Note* (1918) 27 YALE LAW JOURNAL, 655, and cases there cited. And the fact is that the desirability of making shares of stock easily transferable has frequently caused the courts to treat stock certificates in other respects as possessing attributes of tangible property rather than as being merely evidence of choses in action. 1 Morawetz, *Corporations* (2d ed.) sec. 226; *Puget Sound Nat. Bank v. Mather* (1895) 60 Minn. 362, 62 N. W. 396; *Simpson v. Jersey City Contracting Co.* (1900) 165 N. Y. 193, 58 N. E. 896.

INSURANCE—CHANGE OF BENEFICIARY—EFFECT OF INSURED'S DEATH BEFORE ACTION BY INSURER.—In an insurance policy the power and privilege of changing the beneficiary were reserved. Such change was to be made "by written notice to the company at its home office, accompanied by the policy, and will take effect only when endorsed on this policy by the company." The insured made out a notice in writing, changing the beneficiary, and deposited it with his policy in the hands of the local agent of the company. The insured died suddenly, and thereafter the agent forwarded the papers to the home office and the change was duly endorsed on the policy. *Held,* that these facts operated to effect a change of beneficiary. *State Mutual Life Ass. Co. v. Bessett* (1918, R. I.) 102 Atl. 727.

The prevailing rule to-day is that the beneficiary has a vested right as soon as the policy is executed. This right, however, may be created subject to a power in the insured, or in the insured and insurer together, to change the beneficiary. The question is as to just what facts will operate legally as an exercise of this power,—a question to be answered by a fair construction of the terms of the insurance contract, involving both state statutes and company by-laws. If no special method of exercising the power is prescribed, any ordinary and reasonable method, such as a written notice by the insured, is sufficient. *Supreme Conclave v. Cappella* (1890, C. C. E. D. Mich.) 41 Fed. 1. See also *Ellis v. Fidelity Co.* (1913) 163 Iowa, 713, 144 N. W. 574 (changed by will). Where the method is prescribed, it must be substantially complied with. But where exact compliance with the prescribed method has been prevented by the beneficiary, the change is usually held to be complete. *Marsh v. Supreme Council* (1889) 149 Mass. 512, 21 N. E. 1070; *Hirschl v. Clark* (1890) 81 Iowa, 200, 47 N. W. 78. In many cases, the power is regarded as resting in the insured alone,

and it has been very generally held that an attempted change of beneficiary was effective when the insured had done "all that was required of him, or all possible for him to do" even though the company's action on his request took place after his death. *Mutual Life Co. v. Lowther* (1912) 22 Colo. App. 622, 126 Pac. 882; *Wandell v. Mystic Toilers* (1906) 130 Iowa, 639, 105 N. E. 448; *Grand Lodge v. McFadden* (1908) 213 Mo. 269, 111 S. W. 1172; *Luhrs v. Luhrs* (1890) 123 N. Y. 367, 25 N. E. 388. According to these cases the provision that the change is to "take effect only when endorsed on the policy by the company," or when some similar act is done, does not give the insurer the privilege of non-compliance with the insured's desire, but provides for a purely ministerial act, the performance of which could either be compelled by the new beneficiary or dispensed with altogether. There are some cases substantially in conflict with these, holding that where the insurer had not acted on the insured's request the change was not effective and could not be enforced. *Freund v. Freund* (1905) 218 Ill. 189, 75 N. E. 925; *O'Donnell v. Metropolitan L. Ins. Co.* (1915, Del.) 95 Atl. 289; *Sheppard v. Crowley* (1911) 61 Fla. 735, 55 So. 841. Even if an act of the insurer is one of the necessary operative acts to effect the change, and even if this act is discretionary with the insurer (i. e. he is privileged to do or not to do the act), there is no reason for requiring that act to be done prior to the death of the insured. The *power* in the insurer to effectuate the change comes from the original contract, to which the beneficiary's right is at all times subject, and the later action of the insured would seem to be merely a condition to the exercise of this power. Therefore the death of the insured after having fully performed the condition should not revoke the power of the insurer, even though the insured might possibly have revoked it by a voluntary act while living. *Luhrs v. Luhrs* (1890) 123 N. Y. 367, 25 N. E. 388 (*semble*). It necessarily follows, however, from the recognition of a discretionary power in the insurer, that there is no change of beneficiary if the company in its discretion refuses to do the necessary operative act, and this is true whether the insured is living or dead. *Freund v. Freund, supra.* And the contract may, of course, expressly confine the power of the insurer to acts performed prior to the death of insured. *Modern Woodmen v. Headle* (1914) 88 Vt. 37, 90 Atl. 893.

JUDGMENTS—EQUITABLE RELIEF—DEFENSE PREVENTED BY FAILURE TO RECEIVE SUMMONS.—A son forged his mother's signature to a note. In a suit upon the note summons was served at the mother's former residence (where she no longer resided) by delivery to the son, who concealed it from his mother. At the trial he appeared and testified to the genuineness of his mother's signature, and judgment was rendered against her. As the statutory period of 30 days for setting aside a judgment had expired, the trial court denied relief. The mother sued in equity for an injunction against enforcement of the judgment. *Held,* that proceedings on the judgment should be perpetually stayed unless the defendants should agree to a new trial. *Yung v. Roll Stickley & Sons* (1917, N. J. Eq.) 102 Atl. 698.

By rather labored reasoning the court construed this as a case of "accident," justifying equitable relief on that ground. No such straining of language would seem to be necessary. The objection to the validity of the judgment was the more fundamental one that the court had never acquired, by proper service, any jurisdiction over the judgment defendant. But though the judgment was void, there was no procedure at law to set it aside after the thirty days, and the aid of equity was therefore necessary to stop the machinery of enforcement. It is well settled that where, in an action depending on personal service to give jurisdiction, notice was not properly served upon the defendant, equity will enjoin enforcement of a judgment. *Jones v. Commercial Bank* (1840, Miss.)